

DEVIN DERHAM-BURK #104353  
CHAPTER 13 STANDING TRUSTEE  
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

PINA, EDWIN

MAC, MAILENE

Debtor(s)

)  
)  
) Chapter 13  
) Case No. 09-5-7362 RLE  
)  
) TRUSTEE'S OBJECTION TO  
) CONFIRMATION WITH CERTIFICATE OF  
) SERVICE  
)  
) 341 Meeting: Date: OCTOBER 19, 2009 @  
) 10:30 AM  
) Pre-Hearing Conference Date: DECEMBER 10,  
) 2009  
) Pre-Hearing Conference Time: 2:00 PM  
) Place: 280 S. 1<sup>st</sup> Street Room 3099  
) San Jose, CA  
) Judge: Roger L. Efremsky

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this 0% Plan for the following reasons:

1. The Trustee objects to feasibility of the proposed plan pursuant to 11 U.S.C. § 1325(a)(6) for the following reason: The proposed plan does not provide for arrears and/or on-going payments to junior lienholders on real property because a motion or adversary to eliminate the lien will be filed. The proposal does not demonstrate how the debtors will be able to pay the amounts due to junior lienholders in the event the debtors are not successful in eliminating the lien.

- 1 2. The Trustee is unable to determine whether 1322(b)(5) is met. Pursuant to “Other  
2 Provisions” on the plan states that “The claim of Chase Mortgage, it assignees,  
3 successors, predecessors, and agents (loan No. 2002479591) relating to debtor’s real  
4 property at 16654 San Benito Plan in Morgan Hill, CA 95037 being totally under-secured  
5 shall be paid concurrent with unsecured creditors pursuant to Paragraph 2(d) of the Plan.  
6 Debtor shall cease making payments to Chase Mortgage, its assignees, successors,  
7 predecessors, and agents (Loan No. 2002479591.)” and “Chase Mortgage, it assignees,  
8 successors, predecessors, and agents shall be required to re-covey its second trust deed as  
9 to Loan No. 2002479591 conditioned on (1) debtor obtaining a judgment in an adversary  
10 proceeding or order after motion to avoid the security interest of Chase Mortgage, its  
11 assignees, successors, predecessors, and agents and valuation of underlying collateral,  
12 and (2) debtor obtaining a discharge in the herein case.” Schedule D lists that account  
13 number for CitiMortgage. The Trustee requests the plan be amended and noticed on the  
14 appropriate creditors.  
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18 3. Schedule A lists total liens on the debtors’ rental property as \$307,930; however,  
19 Schedule D lists liens totaling \$313,650. Because of this inconsistency, the Trustee is  
20 unable to determine whether the liquidation test in 11 U.S.C. §1325(a)(4) is met. The  
21 appropriate schedule must be amended.  
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23 4. Schedule A lists total liens on the debtors’ primary residence as \$653,285; however,  
24 Schedule D lists liens totaling \$655,085. Because of this inconsistency, the Trustee is  
25 unable to determine whether the liquidation test in 11 U.S.C. §1325(a)(4) is met. The  
26 appropriate schedule must be amended.  
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1 5. The debtor is ineligible for Chapter 13 relief, as the Plan is in violation of 11 U.S.C. §  
2 109(e). The debtors' unsecured debts exceed \$336,900.

3 6. The debtor Mailene Mac has failed to comply with 11 U.S.C. § 521(a)(1)(B)(iv) because  
4 she has failed to provide the Trustee with copies of her payment advices for June 23,  
5 2009 through July 26, 2009.

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7 7. The Trustee is unable to determine whether all of the debtors' projected disposable  
8 income is being applied to pay unsecured creditors under the plan as required by 11  
9 U.S.C. § 1325(b)(1)(B). The Trustee requests the debtor Edwin Pina provide the last pay  
10 advice received January 2009.  
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14 Dated: October 15, 2009

/S/ Devin Derham-Burk

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16 Chapter 13 Trustee  
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1 **CERTIFICATE OF SERVICE BY MAIL**

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3 I declare that I am a citizen of the United States, over the age of 18 years, not a party to

4 the within cause; my business address is 983 University Ave. C-100, Los Gatos, California

5 95032. I served a copy of the within Objection to Confirmation by placing same in an envelope

6 in the U.S. Mail at Los Gatos, California on October 16, 2009.

7 Said envelopes were addressed as follows:

8

9 EDWIN PINA & MAILENE MAC

10 16654 SAN BENITO PL

11 MORGAN HILL CA 95037

THE FULLER LAW FIRM

60 N KEEBLE AVE

SAN JOSE CA 95126

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14

15 /S/ Clotilde Costa

16 Office of Devin Derham-Burk, Trustee

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